STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CARROLL COMMUNITY SCHOOL DISTRICT, Complainant,	)	
and	)	CASE NO. 5161
CARROLL EDUCATION ASSOCIATION, Respondent.	)	

PROPOSED DECISION AND ORDER

The Carroll Community School District (the District) filed a prohibited practice complaint with the Public Employment Relations Board (PERB or Board) against the Carroll Education Association (the Association) pursuant to section 11 of the Public Employment Relations Act (the Act), Iowa Code chapter 20. The District alleges the Association committed prohibited practices within the meaning of sections 20.10(3)(c) and (d)[1] by utilizing one costing methodology during salary negotiations with the District, then utilizing a different costing methodology during its presentation to the interest arbitrator appointed to resolve the parties' 1994 bargaining impasse. The Association has denied the commission of a prohibited practice as alleged by the District.

Pursuant to notice, a hearing was held before me in Carroll, Iowa on June 7, 1995. Both parties were represented, Arthur A. Neu for the District and Gerald L. Hammond for the Association. The parties were afforded full opportunity to present evidence and argument in support of their respective positions. Both parties submitted written briefs on June 22, 1995.

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[1]These and all other statutory references are to the Code of Iowa (1993).

Based upon the entirety of the record, and having considered the parties' arguments and briefs, I propose the following findings of fact and conclusions of law.

FINDINGS OF FACT

The material facts of this case are not, for the most part, in dispute.

The District is a public employer and the Association an employee organization as those terms are defined in section 20.3. The Association has been certified by the Board as the exclusive bargaining representative of a unit of the District's professional employees which includes, among others, classroom teachers, guidance counselors and librarians.

The District and the Association have been parties to a long series of collective bargaining agreements since the Association's certification in 1975. Although the parties have at times resorted to interest arbitration under the Act during their relationship, from at least 1989 until 1994 they had voluntarily settled all their contracts without arbitration awards being issued.

During the course of their extended bargaining relationship the District and Association, like bargaining parties generally, have deemed it necessary and prudent to attempt to calculate the financial cost, if any, which the employer would incur should any given proposal be incorporated into the parties' agreement.

The "cost" which will be incurred or the "savings" which will be realized from a given proposal on even a single economic item is at times difficult to precisely determine. Methods of "costing"

economic provisions also differ, with the result that parties may not agree upon the actual cost of a given item, much less the ultimate "total cost" of a collective agreement or package of economic proposals, regardless of whether that cost is stated in actual dollar or "total percentage increase" terms. However, economic proposals made during bargaining, and settlements reached by parties, are nonetheless frequently, if not universally, reduced to "total percentage increase" terms.

Differences of opinion have long existed not only as to the proper methods of costing proposals and settlements, but also as to appropriate ways to view the employer's "ability to pay" a given proposal, part of the section 20.22(9)(c) criterion which public sector interest arbitrators in Iowa are required to consider.

The District, like others in Iowa, receives operating funds from a number of sources and programs, both state and federal. Some is earmarked for limited purposes. For instance, in addition to the so-called "regular program funds" provided to the District by the state's general school aid formula, the District has for a number of years received "Phase II" money from the state, earmarked exclusively to supplement teacher salaries. The District also receives federal funds specifically for the payment of "Chapter One" teachers, who are utilized by the District primarily to enhance students' reading skills, as well as state "special education" monies which are supplied, in addition to the state's regular per-pupil contribution, to finance the instruction of the

District's disabled students by certified special education teachers.

One costing method at times employed by parties considers only regular program funds and the teachers paid from those funds, excluding Chapter One and special education teachers. Another includes Chapter One and special education teachers, as well as the employer's funding which is earmarked for the programs they teach. Other mixes may also be advanced or utilized by parties, some of which include consideration of Phase II monies, some of which do not.

Calculating the cost of future employee insurance benefits also becomes complicated at times, contributing additional variables in the computation of the widely-utilized "total package increase" figure. Difficulties in the accurate costing of insurance benefits in a proposal or settlement is often complicated by the inability or unwillingness of insurance carriers to commit to premium rates far enough in advance for the parties to utilize known, fixed figures during Iowa's time-sensitive bargaining and impasse-resolution processes.

Although parties may have different philosophies toward the costing of proposals or settlements, may prefer one costing method over another, and may have divergent views on how to gauge an employer's ability to finance a given proposal, they nonetheless have an obligation to bargain over the mandatory subjects of bargaining specified in section 20.9. Neither costing methods nor the means of analyzing an employer's financial ability to pay are

among the section 20.9 topics, however. Consequently, although differences of opinion concerning these subjects may exist, parties may nonetheless develop a practice in which they use a particular costing method during their discussions in order to avoid the "apples to oranges" comparison of costs which would complicate and perhaps confuse their negotiations.

Although a different method may have been utilized by these parties for a time early in their bargaining relationship, it is clear that for many years the parties have discussed proposals made by one or the other during their bargaining by reference to cost figures which resulted from an application of the District's preferred costing method. That method included all salary schedule costs (including the salaries of special education and Chapter One teachers), extended contract costs, "extra duty" costs and an estimated cost for insurance premiums for the period to be covered by the successor contract. The formula did not consider Phase II program costs or FICA and IPERS expenses incurred by the employer.[2]

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[2]Although the Association has long acquiesced in the use of this costing method so as to allow it to negotiate with the District using a common parlance, there is no evidence that it ever specifically agreed to do so, or that it believed that the method was the only, best or most accurate costing method which could be utilized. To the contrary, although using the method in its discussions with the District, the Association routinely costed proposals or settlements differently, both for its own internal use and for its reports to the Iowa State Education Association (with which it is affiliated), by utilizing a method which included Phase II monies and regular program funds, and excluded special education and Chapter One teachers in view of the existence of special funds received by the District for the maintenance of the special programs with which those teachers were involved.

In December, 1993, bargaining for a successor 1994-95 collective agreement commenced with the Association's presentation of its initial bargaining position to the District. The parties were ultimately unable to reach a complete agreement upon the terms of a successor contract, despite the intervention of a mediator and the presentation of a number of offers by both parties. Throughout their negotiations the parties characterized and discussed the offers under consideration by reference to the cost figures yielded by the costing method they had utilized in the past.

A request for arbitration as contemplated by PERB rule was ultimately made by the Association in early April, 1994, and the parties thereafter selected a single arbitrator to whom their impasse would be submitted. On or about April 8, 1994, representatives of the parties exchanged their final offers on each remaining impasse item, as contemplated by section 20.22(2) and PERB subrules 621-7.5(4)(b) and (e). The parties exchanged final offers on what the arbitrator subsequently viewed as four impasse items: extra duty pay; pay for nurses; health and major medical insurance and teacher base salary.

Neither of the parties' final offers contained any reference which characterized its cost, either in actual dollar figures or in percentage increase terms. There is no evidence, and neither party suggests, that the other's offer on any of the impasse items had

not been made by the offeror during the course of their earlier bargaining.[3]

On May 11, 1994, a hearing was conducted before the arbitrator in Carroll. The Association proceeded first. In the course of its case the Association presented the arbitrator with exhibits which identified the costs of both its and the District's final offers by utilizing not only the costing method which the parties had employed during their negotiations, but also an alternative method which made reference to the salaries of regular program teachers only, and excluded special education and Chapter One teachers.[4] The effect of the use of the alternative costing method, which the

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[3]The Association's offer was to use $19,200 as the base salary on the teacher salary schedule, to make a structural change in the nurses' salary schedule, to compensate those performing tasks listed on the extra duty schedule at $7.90 per hour and to incorporate the existing contract's provisions concerning heath and major medical insurance into the successor contract. The District proposed a base teacher salary of $19,075, to continue the nurses' salary schedule unchanged, to leave extra duty pay at the existing $7.65 level, and to eliminate the existing contract's requirement that the District reimburse employees 50% of their expenses incurred in co-payments under the health and major medical policy and increase the existing maximum employee liability for deductibles and co-payments.

[4]According to the Association's calculations using the method employed by the parties during their negotiations, its final offer represented a 4.7% total percentage increase, while the District's represented a total increase of 3.74%. Utilizing the alternative costing method, the Association calculated its offer as a 4.6% increase, and the District's as 3.65%.

The District presented the arbitrator with an exhibit which characterized its final offer as a 4.03% total increase, and the Association's at 5.05%. The differences between the results reached by the parties' purported application of the same formula are attributable, at least in part, to the District's continued use of an estimated insurance premium increase of 5%, a figure both parties had used during negotiations but which had recently been superseded by the insurer's announcement that premiums would in fact increase 2.72%.

Association argued to be more reasonable then the method used by the District, was to present the total percentage cost of both offers as figures which were lower than those yielded by use of the method the parties had traditionally employed during bargaining. Since the District's offer, costed by either method, was below what was then perceived as the "settlement trend," and the Association's offer, costed by either method, was above, the reduction in apparent percentage costs resulting from the use of the alternative method dropped the District's offer further below the apparent trend and reduced the amount by which the Association's offer exceeded the perceived trend.

Although no mechanical recording or transcription of the proceedings before the arbitrator were made of record in this case, it became apparent at some time during the arbitration hearing that the parties' costings were at variance. The arbitrator recessed the hearing and instructed the parties to meet and try to resolve their costing differences. The parties met but were unable to agree upon a uniform costing approach for their presentations to the arbitrator. The hearing resumed.

The Association's inclusion of Phase II funds in its costing calculations created confusion among the District's representatives as to whether those funds should be considered. While the District realized and understood that the Association had also excluded the Chapter One and special education teacher salaries, it disagreed with the method the Association had employed, at least in part because it had never been discussed between the parties or used by

them in their discussions. However, there is no evidence the District ever directly voiced any claim of unfairness or surprise to the arbitrator based upon the Association's use of its alternative method, or that it attempted to impeach the accuracy or reasonableness of the method itself or of any of the figures the Association had plugged into its alternative formula.

On May 26, 1994, the arbitrator issued his final and binding award, awarding the District's position on the issue of extra duty pay, and the Association's position on health insurance, nurses' pay and teacher base salary.[5]

The District subsequently commenced the instant prohibited practice proceeding.

CONCLUSIONS OF LAW

In its complaint, the District alleges the Association committed prohibited practices within the meaning of sections 20.10(3)(c) and (d). Those sections provide:

> **20.10 Prohibited practices.**
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> . . .
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> 3. It shall be a prohibited practice for public employees or an employee organization or for any person, union or organization or their agents willfully to:
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> . . .
>
> *c.* Refuse to bargain collectively with a public employer as required in this chapter.

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[5]In his award the arbitrator noted that the District had provided cost information for all bargaining unit members, including those paid with Chapter One and special education funds, but had not included the Chapter One and special education funds themselves in its cost calculations. The arbitrator adopted the figures from the Association's alternative cost calculation, which were, as previously discussed, limited to the regular program funds and costs.

d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

The District alleges that the Association failed to act in good faith because, throughout the course of negotiations, the parties discussed and characterized the cost of their respective economic proposals by reference to a costing method which excluded Phase II dollars and included all Chapter One and special education teachers, yet, at hearing before the arbitrator, the Association presented computations in support of its final offer which were based upon a method which included Phase II dollars and excluded Chapter One and special education teachers.

The District alleges this conduct is similar to and just as serious a violation of the Act as that found violative of the statute in Everly Education Association and Everly Community School District, 83 PERB 2444, and PPME, Local 2003 and City of Urbandale, 90 H.O. 4210. In Everly, at least, PERB concluded that a party may not submit an offer for the first time at arbitration which is better than any previously offered to the other side during the course of negotiations.[6] I do not agree that these cases are applicable here.

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[6]The District characterizes Urbandale as a PERB finding of a prohibited practice was committed by the City's presentation of wage and insurance proposals to the arbitrator which were higher than the previous offer made to the Union. However, even assuming the accuracy of this characterization, the decision cited by the District was a proposed decision of an ALJ which was appealed to the Board, which never became the agency's final decision, and which is of no precedential value, especially in view of the Board's subsequent dismissal of the complaint without reaching the merits of the dispute.

In the instant case there is no claim that the Association presented a better offer to the arbitrator than had been previously offered to the District, or that the Association's offer at arbitration was one which the District had not previously seen and rejected during the course of negotiations. Instead, the District appears to argue that the Association should be prohibited not only from submitting a new and different offer at arbitration, but also from advancing different arguments or evidence in support of its offer than those raised during bargaining. I find no such prohibition imposed by either the Act or PERB precedent.

There is no requirement in the Act or PERB's rules that the parties are to automatically exchange or share, prior to the arbitration hearing, the evidence, arguments or theories they intend to advance at that hearing in support of their respective positions. Nor is there evidence in this record that the parties had any kind of agreement which restricted the methods of costing which could be used at arbitration. Were there evidence that the Association intentionally presented exhibits or information to the arbitrator which it knew to be false, a different situation would exist. This record, however, contains no such evidence.

Interest arbitration under section 20.22 is a form of litigation--the ultimate adversarial step to which parties resort when all efforts toward voluntary settlement have failed. As such, parties would be justified to expect and prepare for their adversary to try to make the best, most persuasive case possible that its offers are the more reasonable of the selections

available, and to expect that the adversary will present theories, evidence and arguments which are calculated to put its offers in the most attractive light possible, subject, of course, to criticism and rebuttal by the other party.

The District now assails not only the accuracy of certain figures used in the Association's cost computations but also the rationale underlying its alternative costing method, and characterizes the Association's presentation of the different costing methodology as having been submitted under circumstances where the District had "no opportunity to correct or refute the erroneous impressions" which the Association had allegedly created. There is no evidence in this record, however, which in any way supports a finding that the District was precluded at the arbitration hearing from revealing any perceived errors in the Association's figures or from making a case that the Association's alternative costing methodology was less reasonable or probative than its own. Such was, however, the appropriate forum and time to do so.

I conclude the District has failed to meet its burden of establishing that the Association committed a prohibited practice by utilizing costing methods and arguments at arbitration in support of its final offers which were different than those utilized during the course of bargaining. Accordingly, I propose entry of the following:

ORDER

The prohibited practice complaint filed herein by the Carroll Community School District is hereby DISMISSED.

DATED at Des Moines, Iowa, this 21st day of August, 1995.

Jan V. Berry,
Administrative Law Judge